

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11

BLUE DOG AT 399 INC.,

Case No. 15-10694-mew

Debtor.

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BLUE DOG AT 399 INC.,

Plaintiff,

Adv. Pro. No. 18-01571-mew

-against-

SEYFARTH SHAW, LLP and  
RALPH BERMAN,

Defendants.

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**ORDER DISMISSING ADVERSARY PROCEEDING  
PURSUANT TO BANKRUPTCY RULE 7012(b) AND FEDERAL RULE OF  
CIVIL PROCEDURE 12(b)**

Upon consideration of the first amended adversary complaint [ECF #12] (the “**Complaint**”) filed by Plaintiff Blue Dog at 399 Inc. (including any successors and assigns, the “**Plaintiff**”) in the above-captioned adversary proceeding (the “**Adversary Proceeding**”); and upon consideration of the *Defendants’ Motion for Dismissal of Adversary Proceeding Pursuant to Bankruptcy Rule 7012(b) and Federal Rule 12(b)(1) and (6)* [ECF Doc. #16] (the “**Motion**”); and upon consideration of the *Plaintiff’s Brief in Opposition to Motion to Dismiss* [ECF Doc. # 19]; and upon consideration of the *Defendants’ Reply in Support of the Motion for Dismissal of Adversary Proceeding Pursuant to Bankruptcy Rule 7012(b) and Federal Rule 12(b)(1) and (6)* [ECF Doc. # 21]; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has

been given and that no other or further notice is necessary; and upon consideration of the arguments presented at the hearing held on November 20, 2018 to consider the Motion (the “**Hearing**”); and after due deliberation; it is hereby

**ORDERED ADJUDGED, AND DECREED THAT:**

1. For the reasons stated on the record at the Hearing, the Motion is **GRANTED** and this Adversary Proceeding is dismissed, subject to the conditions set forth in this Order.

2. Count One (Declaratory Judgment) and Count Three (Claim under New York Judiciary Law § 487) of the Complaint are hereby dismissed with prejudice as to all Defendants pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted, as made applicable to the Adversary Proceeding by Bankruptcy Rule 7012(b).

3. Count Two (Negligence/Legal Malpractice) of the Complaint is hereby dismissed without prejudice as to all Defendants; *provided*, that any future action that may be filed with respect to claims for negligence/legal malpractice arising out of the same facts and circumstances alleged in Count Two of the Complaint may be commenced exclusively in this Court and, so long as it is commenced within two years following entry of this Order, shall be deemed to relate back to the date of filing of this Adversary Proceeding for purposes of applying any statute of limitations, laches, or similar defense to such claims, all of which limitations periods are tolled. Plaintiff may serve any new complaint asserting such claims for negligence/legal malpractice upon all Defendants by service upon their counsel of record in this proceeding.

4. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: December 6, 2018  
New York, New York

**s/Michael E. Wiles**  
HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE